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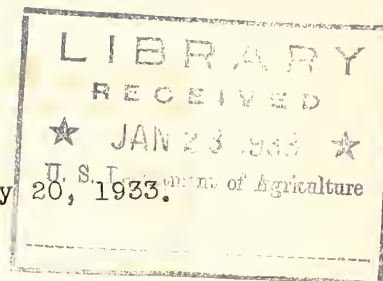
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Instructions relative to fair market value  
statements required in connection with  
rentals of buildings or parts of buildings

Reference is made to P. B. A. Circular 213 on this subject. It is appreciated that the assembling of data and preparing satisfactory fair market value statement are difficult tasks and frequently require more time and work than the value of the rental, especially in the case of the rental of garage or the like, seems to warrant. Nevertheless, a positive requirement of law is involved, and, for the protection of all concerned, in no case, where a fair market value statement is required, may a payment of rent, however small, be made until a satisfactory statement has been furnished and it is clearly established that the rate of rental proposed to be paid is not in excess of that allowed by section 322 of the Economy Act quoted in P.B.A.Circular 213. In fact the Comptroller General has indicated that he will disallow any rental payment that he deems in excess of that which may legally be made under the said section of the Economy Act. It is therefore useless to complain about the red tape, or the difficulty, or uselessness of obtaining fair market value statements--they must be obtained, and it is highly desirable that each field employee who negotiates rentals of any kind familiarize himself with the general requirements regarding fair market value statements and in each case, no matter how small the amount or how short the period of rental, where statement is required, furnish such statement as complete in detail and as promptly as practicable. This is particularly true since it is to be noted that section 322 of the Economy Act quoted in P.B.A.Circular No. 213 is permanent legislation, that is, it does not apply merely to rentals of the present fiscal year but will apply to rentals of future years, unless it is repealed or amended, so that as the matter now stands, rentals of the present fiscal year cannot be renewed for or continued into the next fiscal year, nor can new rentals for such year be undertaken, without being supported by adequate fair market value statements.

Judging from some of the fair market value statements which have been received in this office, the employees who prepared them paid little attention to the provisions of P.B.A. Circular No. 213. All concerned are urged to study carefully the provisions of that circular and to note particularly:

The statement must be based on facts and the nature and source of such facts must be shown. It is not sufficient for you merely to give your own unsupported estimate, or the estimate of the owner of the building as to what a building or part of a building proposed to be rented is worth. You must show the facts and the source of such facts on which such estimate is based. These facts may consist of the data enumerated in P.B.A.Circular No. 213, that is, as for example, last tax assessment appraisal, and if such appraisal does not represent the full value, as is frequently the case, the proportion of full value of premises used by law or prevailing

custom as basis of tax assessment; the price paid for a comparable building sold in the neighborhood at a fairly recent date; the original cost of construction, with date thereof, of the building in which space is proposed to be rented, or an estimate of what it would cost at the present time to construct a similar building, less deterioration from date of actual construction (original cost of construction to be obtained, if practicable, from contractor who constructed building, or from records of owner thereof when building was constructed; or if cost of constructing similar building at present time is given, estimate should be obtained from local building contractor or someone qualified to give a reliable estimate). In this connection, attention is called to the fact that while section 322 of the Economy Act refers to buildings and parts of buildings, a fair market value of any premises must be based on the value, not only of the building itself, but also of the land upon which the building stands, so that in any case the assessed value of premises should consist of the combined appraisal of the building and of the land, if these two items are carried separately upon the assessment records. Also, to cost of construction of a building should, of course, be added the assessed, or otherwise determined value of the land involved, to get the total value of the premises.

In addition to data enumerated in P. B. A. Circular 213 upon which fair market value statement may be based, it is suggested that if the building involved is insured, the amount of insurance carried thereon may generally be regarded as evidence of the current valuation of such building to which, since value of the land on which the building stands is not generally included in the insured value of the building, should be added the assessed or otherwise determined value of such land to get the total value of the premises. Also in a recent decision on the subject of fair market value statements, the Comptroller General, after stating that no extra expense, such as hiring appraisal experts, or paying someone outside the Government service for the preparation of statement, may be incurred, suggests that all officers and employees of the Government cooperate in preparing statements of fair market value and that "frequently, no-doubt, the assistance of the United States Attorney, the postmaster, and other local officials, may be secured and utilized advantageously." This office also suggests that if there is a local Federal Business Men's Association or other representative of the Area Coordinator in the city where premises are proposed to be rented, such association or other coordinator's representative may appropriately be called upon to assist in these matters, and especially to furnish a disinterested estimate of the current value of such premises.

Particular attention is called to the last paragraph of P.B.A. Circular 213. It is this paragraph which has been apparently entirely overlooked by some employees who have submitted fair market value statements. In few instances (except where a one-car garage or the like is involved) does the bureau rent a whole building--most bureau rentals cover parts of buildings, and, in each such case it is the fair market value of the part of the building proposed to be rented that is required. To get the fair market value of a part of a building, it is, of course, first



necessary to obtain the fair market value of the entire premises involved, and take such proportion of the entire valuation as the part of the premises proposed to be rented represents. This, it is admitted, is often, the most difficult and complicated part of preparing a fair market value statement. If all rentable parts of the building are equally valuable, it is a simple arithmetic problem to divide the fair market value of the entire premises by the total number of rentable square feet of space contained therein, and multiply the result (the value per square foot of rentable space) by the number of square feet of space proposed to be rented, which will give the fair market value of such space, while 15% thereof will give the maximum rental per year which may be paid therefor. For example, suppose fair market value of entire premises (land and building) is \$100,000, building contains 20,000 square feet of rentable space, and 500 square feet are proposed to be rented at \$25 per month, or \$300 per year, then  $\$100,000 \div 20,000$  gives \$5, value per square foot of space, which multiplied by 500 gives \$2,500, value of 500 square feet proposed to be rented; 15% of \$2,500 gives \$375 as maximum annual rental which may be paid under the Economy Act for the 500 square feet in question, and as the annual rental proposed to be paid is \$300, it is under the maximum allowed by law, with \$75 to the good to cover deterioration of the building at the rate of  $1\frac{1}{2}\%$  per year for two subsequent years, if rental at the same rate continues for that period, and value of the building, outside of deterioration, otherwise remains the same. Whenever a proposed rental can be justified on the basis just indicated, without going into the matter of the relative values of different parts of the building, such basis should be used.

However, it is where different parts of a building differ in value for renting purposes, and this fact must be reflected in fair market value statement in order to justify rate of rental proposed to be paid, that the greatest difficulty in preparing a satisfactory statement arises. As, taking the example above given, suppose 5,000 of the total 20,000 square feet of rentable space, because of its location in the building, etc., represents the most valuable part of the building, and that the 500 square feet of space proposed to be rented is a part of this 5,000 square feet. It would then be necessary to ascertain the proportion of the total value of the premises represented by this 5,000 square feet, divide this value by 5,000 to get the value per square foot, and multiply by 500 to get the value of the space to be rented. The real difficulty in a case of this kind consists in ascertaining the proportion of the value of the entire premises represented by the 5,000 square feet. This information must come in the first instance from the owner of the building or his representative, but it must be verified by the employee negotiating the rental, assisted, if practicable, by the local Federal Business Men's Association, or one of the Government officials referred to by the Comptroller General in decision quoted from above.

Of course, if a definite part of an entire building, as a half, or a third, etc., as in the case of renting space for one car in a two or three car garage is proposed to be rented, it is not necessary to calculate value by square foot of space, but merely to take one-half, one-third, etc. of the value of the entire premises, in preparing fair market value state-

ment,

Particular attention is called to the fact, as offering some measure of relief regarding fair market value statements in certain kind of cases, that where unassigned space is rented in a public garage such rental need not be supported by a fair market value statement. This ruling is not one of the Comptroller General, but comes from one of the officials of the General Accounting Office and reads:

"In reply to your request as to whether section 322 of the Act of June 30, 1932 (Economy Act) applies to this and similar agreements, you are advised that agreements for the storage of cars where rent is paid for no particular space and premises remain in the control of the owner or operator, may be considered as not being "leases" within the purview of the Economy Act." This means that if you rent a definite, assigned space, one which you control and which is reserved for your particular use, a fair market value statement must support the rental agreement, no matter how large the garage may be or how many cars it may accommodate; but if you merely rent the right or service of storage, no particular space being assigned to you, but such space as may be available from time to time as car is offered for storage being assigned by the owner or operator of the garage, then no fair market value statement need support the rental agreement. It is believed that when space is rented in a public garage it is almost always unassigned space controlled by the garage owner or operator, but unless the rental agreement itself clearly shows that no particular space is involved, such agreement should be accompanied by a statement setting forth that fact. Please note in this connection that if storage for other property in addition to automobile is covered by a rental agreement, it will be a difficult matter to show that a definite, assigned space is not involved.

Quite a few fair market value statements that have been received in this office have depended to a degree, at least, on a showing of the value of services apart from mere occupancy of space, such as heat, light, janitor and elevator service, to justify the rates of rental applicable to the cases involved. These statements, if otherwise satisfactory, have been submitted to the General Accounting Office and to date that office has not objected to any of them on the ground of the inclusion of such items. The Comptroller General has not as yet passed specifically on the question of whether or not these items may be taken into consideration in justifying rate of rental as within the provisions of section 322 of the Economy Act. In a recent decision, however, he indirectly referred to them in a way that makes it doubtful if he would permit them to be considered as making up the difference where the annual rate of rental does in fact exceed 15% of the fair market value of the premises involved. As a matter of fact, when items of heat, light, etc., are included in a rental, it would usually be difficult, if not impossible, to establish what portion of such rental covers actual rent of space and what portion covers the items in question, and after all, section 322 of the Economy Act is clear enough that in no case may rent, whatever it may be based upon, in excess of the per annum rate of 15% of the fair market value of



the rented premises be paid. Furthermore, if a building is well and modernly equipped as regards heating, lighting, elevators, etc., those features are reflected in an enhanced fair market value, just as are such features as that the building is a well-constructed, fire proof structure, centrally located in the business section of a town, etc. The safe course, therefore, is, unless otherwise subsequently advised, not to rely on the items just discussed to justify a proposed rental, where the annual rate of such rental does in fact exceed 15% of the fair market value of such premises. Nevertheless, such items, as well as all others, such as type of building, location, etc., which tend to show true value of building may properly be included in fair market value statement.

Fair market value statements should not be written in the form of letters, especially not in letters that deal with other matters beside such statement. The original of each fair market value statement must be filed in the General Accounting Office, together with supporting papers. The statement should, therefore, be submitted to the bureau in duplicate, the original thereof on regular bureau letter head paper to be signed by the employee, over his official title, preparing the statement. This statement, to identify the rental which it covers, should be headed somewhat as follows: Fair Market Value of Rented Premises as covered by Informal Rental Agreement with (or accepted bid of) \_\_\_\_\_, dated \_\_\_\_\_.

A final word of caution: except in the case of the rental of unassigned space for storage of automobile in public garage (see above) do not incur any rental obligation until you are assured by this office that fair market value statement submitted in the case justifies the rental proposed to be paid, unless you are so convinced that the proposed rental is within the legal limitation of section 322 of the Economy Act that you are willing to assume the responsibility of incurring such obligation before the approval by this office of fair market value in the case. It is safest not to accept on behalf of the bureau an informal rental agreement (form Bi-921), but send it to the bureau accompanied by fair market value statement, for acceptance here if such statement is deemed adequate. If and when acceptance is made by the bureau, you will be duly advised. To follow this suggestion requires sufficient planning in advance to permit a proposed agreement with accompanying fair market value statement to be received and acted upon by the bureau, possible corrections in statement to be made, you advised of the acceptance in case, etc., before the period covered by the agreement begins. It is true that all this will take time and will further complicate an already complicated procedure, but it is suggested solely for the protection of employees.

Another thing, remember a new fair market value statement must be furnished, as long as section 322 of the Economy Act stands as now written, for each year a rental is continued, but that the first statement of this kind in any case will be the basis of all future statements, any variation in the latter, especially if enhancement of value as shown in the original statement is involved, to be explained and justified. As a result of this fact and in view of the item of deterioration, if for no other reason, difficulty may be experienced in preparing a fair market value statement for the continuance of a rental into the fiscal year 1934, for example, if the fair market value statement for the present year barely justifies the rate of rental being paid.

Various questions have been asked regarding the application of section 322 of the Economy Act. Some of these questions that may be of general interest, together with the best answers that can be given at this time are as follows:

1. May payment be made from Government funds for the service of experts called upon to make appraisals of property? (This question has been answered in the negative by the Comptroller General (see above.))

2. May the owner of property proposed to be rented, or such owners representative, after explaining to him the nature of the provisions of section 322 of the Economy Act, be requested to furnish fair market value statement of such property, showing that the rental asked does not exceed the maximum allowed by said section?

The Comptroller General's answer to this is, "Yes." In a case where bids were to be solicited and he was asked this question he replied: "Presumably the facts can be ascertained in connection with obtaining proposals, owners or those acting for them to be advised of the requirements of the law and requested to make showing accordingly, such showing to be checked and verified by those acting for the United States and supplemented to the extent necessary to establish the rental to be within the limit fixed by law."

3. Suppose bids are invited, and the lowest bid received, while meeting specifications, quotes an annual rental in excess of 15% of the fair market of the premises--what action would be taken?

The case would be presented to Mr. Ashley, Chief of Division of Purchase, Sales and Traffic, of the department, who probably would submit it to the Comptroller General.

4. This question is similar to the above but involves a case where there is only one suitable building within a practicable distance that is available to rent, but rental asked for such building is in excess of 15% of the fair market value thereof--what action would be taken?

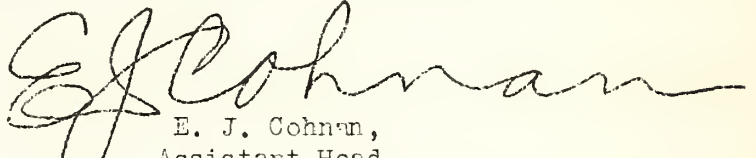
The case would have to be presented to the Comptroller General for decision.

5. Under conditions as outlined under questions 3 and 4, would any responsibility attach to an employee, charged with the custody of Government property, for theft of or damage to such property resulting from inability to house or store it?

If otherwise, all due care has been exercised as regards such property, and proper effort has been made to comply with requirements relative to the negotiating of rental in the case, no responsibility would attach to employee. If in any instance, under conditions as stated in questions 3 and 4, because of the nature of the property involved, etc., definite and



serious damage is likely to result to such property rental of temporary emergency storage; pending decision in the case, would be justified. The question in a case of this kind turns on the nature of the property--for instance, temporary rent of storage space at a rental in excess of that allowed by the Economy Act would probably be justified in the case of perishable goods, but might not be justified as regards an automobile, which can be locked against theft, protected against freezing, and the deterioration of which from exposure to the weather is gradual and indefinite.

  
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